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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-fourth session

SUMMARY RECORD OF THE 22nd MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 19 August 1992, at 10 a.m.

Chairman: Mr. SACHAR

later: Ms. KSENTINI

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(a) Question of the human rights of persons subjected to any form of detention or imprisonment

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The meeting was called to order at 10.25 a.m.

THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES:

(a) QUESTION OF THE HUMAN RIGHTS OF PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

(b) QUESTION OF HUMAN RIGHTS AND STATES OF EMERGENCY

(c) INDIVIDUALIZATION OF PROSECUTION AND PENALTIES, AND REPERCUSSIONS OF VIOLATIONS OF HUMAN RIGHTS ON FAMILIES

(d) THE RIGHT TO A FAIR TRIAL (agenda item 10) (continued) (E/CN.4/Sub.2/1992/17-19, 20 and Add.1, 21-23, 24 and Add.1-3; E/CN.4/Sub.2/1992/NGO/11-13 and 20; E/CN.4/Sub.2/1991/7, 23, 26, 28/Rev.1, 29 and 56; E/CN.4/1992/13 and 14; A/46/703 and Corr.1; A/C.5/46/4)

INDEPENDENCE AND IMPARTIALITY OF THE JUDICIARY, JURORS AND ASSESSORS AND THE INDEPENDENCE OF LAWYERS (agenda item 11) (continued) (E/CN.4/Sub.2/1992/25 and Add.1; E/CN.4/Sub.2/1992/NGO/11; E/CN.4/Sub.2/1991/30 and Add.1-4)

1. Mr. LESTOURNEAUD (International Union of Lawyers), recalling Commission on Human Rights resolutions 1992/33 and 1992/31 which both stressed the role of lawyers in the promotion of human rights in the administration of justice, said that the International Union of Lawyers intended to pay much more attention to the implementation of United Nations guidelines in that field in certain parts of the world. One of the essential duties of lawyers was to protect the independence of the judiciary; unfortunately, it was apparent that practising magistrates and lawyers continued to be the victims of individual or collective violations, assassinations, disappearances, etc. Cases had been reported more particularly in Colombia and Peru, yet more than 10 States implicated in 1992 were signatories of the International Covenant on Civil and Political Rights and its Optional Protocol, and some of them were even parties to the European Convention for the Protection of Human Rights and Fundamental Freedoms, including Italy, Spain, the United Kingdom and Ireland. It therefore seemed that ratifying international instruments was not enough. As the International Commission of Jurists (ICJ) had proposed at the Sub-Commission's forty-third session, what was needed was to establish a genuine investigating body under the auspices of the United Nations with the assistance of the specialized non-governmental organizations (NGOs), so as not to impede but to ensure the normal course of justice in all countries.

2. In conclusion, after studying Mr. Joinet's conclusions and recommendations in document E/CN.4/Sub.2/1992/25 and Add.1, the International Union of Lawyers was in favour of continuing with the testing of the method mentioned in Option 1 of the report and hoped that the Special Rapporteur's mandate would be extended to the examination and setting up of the investigating body which the Union was proposing to establish.

3. Ms. KSENTINI, speaking as an Algerian and as a woman, and not in defence of the Algerian Government, denounced the biased nature of the statement made the previous day by the International Association of Democratic Lawyers. The representative of that organization had referred at length to the trial of the former leaders of the Islamic Salvation Front (FIS), which had been legally

dissolved since its activities were in blatant contradiction with the provisions of the Associations' Act. That representative had described the trial as a parody of justice, but had been careful to avoid any reference to the positions expressed by Algeria's numerous political parties, by the many human rights associations and by the press, which was completely free in Algeria and was capable of being extremely critical; she would have realized, had she been more objective, that what she and some associates saw as black was seen as white by all those who supported tolerance and democracy.

4. Where Mr. Chadli's resignation was concerned, the International Association of Democratic Lawyers had presented it as a disguised coup d'état but had failed to justify its assertion. Until the official end of President Chadli's mandate the President's prerogatives would be exercised by a five-member collegiate body who elected their leader, all of which was perfectly democratic. Pseudo-legalistic concerns might raise questions regarding the legal justification for such a transfer of power, but she herself considered that Algeria had escaped the risk of fundamentalism into which the elections, marked by gross irregularities, had been about to plunge it. She was glad that she could still speak freely and be able to say that no one had the right to use democratic institutions, still less violence, to undermine democracy and that a democratic State was justified in defending itself. Algeria was entitled to try and put and end to the violence and terror which had cost the lives of so many law enforcement officials as well as the Head of State.

5. Mr. SALDANHA (Movement against Racism and for Friendship among Peoples), an exile from Timor since 1986, said he wished to speak on behalf of the families - including his own - of Timorese detainees who were incarcerated in Indonesian prisons. He referred to the cases of large numbers of detainees, whom he named, beginning with their imprisonment, which was not justified by any act of violence on their part; all had been arrested following the events in Dili or the peaceful demonstration organized at Djakarta as a follow-up. He also denounced the ill-treatment and violence to which the detainees had been subjected, the fact that they were denied contact with their families, the jeopardized future of those who could not complete their studies and the pressures to which they were subjected when they tried to have a lawyer of their own choice to defend them. It must be understood, however, that the detainees were not the only victims of those abuses; their lawyers incurred serious risks in carrying out their duties honourably; their families often had no news of them and were frequently left without means. They could no longer count on the income - often the only income - contributed by the detainee, and constant surveillance by the Indonesian secret services made them afraid to accept assistance from their relatives in exile. Lastly, he stressed the flagrant contrast between the situation of detainees sometimes sentenced to life imprisonment although they had not taken part in violence and the light sentences - less than 18 months - imposed on policemen and soldiers who had killed young, unarmed civilians. The Indonesian Government had supported the declaration made by the Chairman of the Commission the previous year and adopted by consensus containing an appeal for the immediate release of Timorese prisoners who had not taken part in violent acts, but it had not followed that declaration up. Furthermore, the fact that access to Timor was still restricted encouraged further repression. He warned the members of the Sub-Commission that the events of Dili were only the tip of the iceberg and placed them before the moral imperative to put aside political expediency and save lives as they were in a position to do.

6. Mr. FORSTER (International Work Group for Indigenous Affairs) said that the arrival at the Palais des Nations the previous day of the Ambassador of Papua New Guinea to Belgium had led him to hope that the Ambassador would address the Sub-Commission on the rights of the people of Bougainville. Those hopes had been dashed. For the two and a half years since Papua New Guinea had imposed a total blockade on the island of Bougainville, the population had been held to ransom because it wanted to exercise its right to self-determination. It was therefore cut off from everything, including medical centres, while the authorities of Papua New Guinea continued to imprison the inhabitants of Bougainville and execute them without trial. According to the latest report of Amnesty International, inhabitants of Buka Island and Rabaul had been the victims of extrajudicial executions - some had been burned alive - by Government forces. Political detainees and criminal suspects were routinely ill-treated and tortured. He added that Amnesty International had asked the Government of Papua New Guinea to inquire into the human rights violations committed by Government forces in Bougainville since 1989 and to bring the perpetrators to justice, but the Government had replied that it had no immediate plans to conduct investigations.

7. He went on to draw the Sub-Commission's attention to the negligence of the legal bodies in Buka Island which, in the 18 months of partial Government control of Bougainville, had not yet considered the more than 60 cases of human rights violations allegedly committed by the security forces. He expressed concern at the introduction of legislation providing for the death penalty particularly in the case of wilful murder, thus discouraging guilty pleas. While prosecutions were being prepared against members of the Bougainville Revolutionary Army (BRA), the issue of human rights violations by the security forces should also be addressed and the criminal liability of those accused as well as the right of all individuals to be adequately defended needed to be assessed.

8. He then informed the Sub-Commission of a recent report that a new concentration camp had been opened at Torakina, on the small and isolated island of Puruatu. More than 1,000 persons, relatives of resistance fighters in the jungle, were believed to have been interned there and the authorities hoped to force the fighters to surrender by that means. The concentration camps, euphemistically called "care centres" served as reservoirs for the security forces which took reprisals against them whenever one of their own number was killed and did not hesitate to massacre entire families and children. He called for the Red Cross to have immediate access to the new prison at Puruatu.

9. He stressed that the Government was invoking the Constitution of Papua New Guinea and Article 2 (7) of the Charter of the United Nations in order to imprison people. He recalled that, at the forty-third session of the Sub-Commission, Mr. Treat had urged members to address the human rights situation in Bougainville. He once again asked the Sub-Commission to utilize its mandate to investigate the blatant violations of human rights and fundamental freedoms of which the people of Bougainville were victims and directly encourage the new Government of Papua New Guinea to respect those rights and freedoms, and thus take a first step towards peace.

10. Mrs. MILJKOVIC (World Federalist Movement) referred to human rights violations in the territory of the former Yugoslavia, particularly in what had

been Bosnia and Herzegovina. She drew the attention of the Sub-Commission to the 21 camps controlled by Muslims from Bosnia in which, together with the Croatian camps, 40,000 Serbs were detained. In order to give the Sub-Commission reliable information, she drew attention to the testimony of an ex-detainee of one of the Muslim-controlled camps at Celebici. The testimony had been obtained at a scientific conference on war crimes and genocide in 1991 and 1992 organized by the Serbian Academy of Arts and Sciences and the State Commission for the Investigation of War Crimes of Genocide. According to the witness, 50 persons arrested in his village and himself had been forced in small groups into holes measuring 2 m by 1.50 m, access to which had then been closed so that the people inside had begun to suffocate. Later they had been taken to a hangar about 30 m wide and 12 m long containing terrorized people whose bodies showed signs of torture. Every evening, 10 to 20 people had been beaten for 20 to 30 minutes by any Muslim, including neighbours or soldiers, who wished to do so. The witness had described the ill-treatment which had been inflicted on 12 victims whom he mentioned by name, 10 of whom were dead when he left the camp. Some of those had been beaten - often on the genitals - one had been tortured and left out in the sun, another had had his feet set on fire, two brothers had been forced to copulate orally and then beat one another, while a diabetic had failed to recover from the injuries caused by the beating he had received. The torture inflicted while the guards laughed and joked had driven two of those persons to commit suicide. At the time of his release in an exchange of prisoners, there had still been around 2,000 prisoners in the camps at Celebici.

11. She said that that was only one among hundreds of depositions. The ethnic conflict in Bosnia and Herzegovina had for the Muslim authorities taken the form of a war of religion, and in the very heart of Europe, the mullahs of Bosnia were summoning young Muslims to a holy war against Serbs and Christians.

12. Ms. SCHREIBER (International Abolitionist Federation), referring to the particularly distressing fate meted out to women detainees, drew the Sub-Commission's attention to Amnesty International's report of December 1991 on rape and sexual torture: torture and ill-treatment of female detainees. According to the report, State agents in various regions of the world used rape and sexual abuse to humiliate, punish and intimidate women. Those acts involved the responsibility of the State and all allegations of torture should immediately be the subject of an independent and impartial inquiry.

13. Many States refused to consider that the rape and sexual abuse inflicted by their agents constituted serious violations of human rights and, although public indignation sometimes forced a Government to investigate and prosecute those responsible, the sentences handed down by the courts against the State's agents convicted of such ill-treatment were rarely in keeping with the atrocities committed. She quoted various cases of violence against women in places as far apart as Indonesia, the Philippines, Uganda, Guatemala, Greece, Northern Ireland and the Nablus region.

14. It should also be recalled that some States still had legislation whereby the victims of rape could even be liable to criminal proceedings. In Pakistan, women convicted of sexual relations outside marriage, particularly in the case of adultery and even of rape, could be sentenced to public flogging, imprisoned or even stoned to death. It was therefore essential that

respect for the rights of women should be kept under extremely careful review and that the international instruments to protect those rights should be strictly applied.

15. Mr. GÖTTLICHER (World Movement of Mothers) said that the worst examples of human rights violations were currently to be found in the detention camps of Serbia, Montenegro and the territories of Croatia and Bosnia occupied by the Serbian aggressors. The detainees were predominantly Croats and Muslims. The prisoners included children or elderly persons, women and the sick, in flagrant violation of the Geneva Conventions. Hostage-taking, also forbidden by those Conventions, was a common practice. The majority of the civilians had been captured by Serbian paramilitary groups, particularly after the fall of Vukovar, when all men between 18 and 60 years of age had been taken to camps, particularly those of Stajicevo and Begejci, which had all the features of concentration camps. A selection was made of the prisoners according to nationality, they were separated from their families, maltreated and psychologically and physically tortured. They received no medical care, were undernourished and were forced to do extremely arduous work. In the so-called private camps, particularly those of Bubanj Botok, Dalj and Beli Manastir, some prisoners were murdered and others disappeared. Doctors from Zagreb's University Hospital for Infectious Diseases had noted the deplorable state of health of the prisoners in Manjaca camp who had been released as part of an exchange of prisoners. Many of them had also exhibited marks of torture.

16. On 4 August 1992, the United Nations Security Council had called for the Red Cross and other international bodies to be permitted to visit the camps and prisons of the former Yugoslavia, particularly in Bosnia and Herzegovina, after the press had reported the atrocities being committed by the Serbs. On 7 August the President of the United States himself had declared that a second holocaust must not happen. The World Movement of Mothers urged the Sub-Commission to help to put an end to the atrocities.

17. Mr. KOECHLER (International Progress Organization) said that the organization he represented was seriously concerned by the increase in the number of executions in the United States. Among the 22 persons executed since the start of the year was Roger K. Coleman, who had almost certainly been innocent. In addition, a hearing to examine new evidence had been denied just before the execution on the grounds that his defence had filed the motion one day late. Roger Coleman had been executed on 20 May 1992 in spite of appeals for mercy by numerous prominent figures, including the Pope, and thousands of ordinary individuals. The International Progress Organization took the opportunity of supporting the European Parliament's resolution of 11 June 1992, and in particular the appeal to candidates for high office in the United States to come out publicly against the death penalty.

18. On 15 June 1992, the United States Supreme Court had ruled that kidnapping foreign citizens abroad to bring them to trial in the United States was not unconstitutional. The decision had aroused a storm of protest, particularly in Latin America. If it were allowed to stand, a complete breakdown of the rule of law might be expected in the relations among nations.

19. He would give Ms. Helga Zepp-LaRouche the opportunity to testify on the human rights violations committed against her husband, Mr. Lyndon LaRouche.

20. Ms. ZEPP-LAROUCHE (International Progress Organization) said that, during a trial which had trampled on all principles of the rule of law, her husband had been falsely charged and sentenced to 15 years in prison, in fact as a political dissident against the United States establishment currently in power. Despite the banning of a scientific magazine spreading Lyndon LaRouche's ideas, a publishing company and a weekly magazine, as well as criminal proceedings against 50 of his associates, the prosecuting authorities had still not succeeded in wiping out the political movement initiated by Mr. LaRouche.

21. All Mr. LaRouche's appeals had been dismissed although the defence had built up a massive file recording all the irregularities observed in the course of the trial. The leading obstacle to a fair trial for her husband had been the refusal on the part of President Bush and the prosecution to release any exculpatory material on the pretext of "national security reasons". Her husband was a noble and selfless person who had devoted all his energies to bringing about a new and just world economic order in harmony with the divine order of creation and guaranteeing the inalienable rights of every person. She had not forgotten that Indira Gandhi had decided, just before her assassination, to implement a development plan prepared by her husband and that in 1982, President Lopez Portillo of Mexico had begun to implement another of his programmes, called "Operation Juárez", which could have brought prosperity to Latin America. Millions of people throughout the world thought that her husband's global reconstruction plan was the only means of combating war, famine and depopulation. In the United States, the civil rights movement considered that her husband was taking up the fight of Martin Luther King to defend human rights, which were being trampled upon as never before. Those were the real reasons why Mr. Kissinger and others had launched a campaign of lies against her husband and had had him sentenced and imprisoned. Their primary intention had been to eliminate him, as a number of documents confirmed. She appealed to the Sub-Commission to do everything in its power to secure her husband's release from his unjust imprisonment.

22. Ms. CORREA (International Association against Torture) deplored the fact that in Chile 43 political prisoners sentenced under Pinochet were still in prison while 120 new political prisoners had been added to their number since President Aylwin's Government had come to power. They included 15 women who were being held at the San Miguel Preventive Detention Centre in Santiago, a prison for male common criminals. Two of the women, Pilar Peña and Roxana Cerda, had been imprisoned with their children; the latter's son was only 18 months old. The conditions of their detention were inhuman and the prisoners were afraid to go to a special room to consult their lawyers for fear of being attacked on the way by the common criminals, since the prison authorities could not guarantee them effective protection. It was therefore their women lawyers who at their own risk had to go to the prisoners' cells. All that information had been transmitted to the Minister of Justice.

23. The International Association against Torture asked the Chilean Government to ensure compliance with international human rights treaties which Chile had signed as well as with the provisions of the Constitution concerning the right to life, and to physical and psychological integrity and equality in the eyes of the law. It also asked the Sub-Commission to call for the transfer of the women and their children to one of the existing women's prisons in Santiago.

24. Mr. CHALAMET (International Association against Torture) suggested that the right to compensation when those detained had undergone moral injury should be included among the human rights of detainees, as had been the case with the Japanese Army's "consolation wives" during the Second World War. Those women, many of whom were still alive, had been "recruited" (in fact kidnapped) in Korea, China and other Asian countries and forced to prostitute themselves to the soldiers of the Japanese Army. Japan's position in that regard recalled that of the Government of the United States, which refused to pay compensation to 40 million descendants of African slaves, considering that neither slavery nor racism were human rights violations which justified such compensation. It devolved on Japan to initiate an in-depth investigation into the facts, so as to elucidate the matter to the full, punish those responsible, convey its excuses to the victims and lastly, like Germany, which paid compensation to the victims of its policy of genocide during the Second World War, give them compensation. The offer to pay a small sum of money like the rich fisherman who sought to purchase a place in heaven did not, in his opinion, constitute in itself an appropriate and acceptable response, but it was nevertheless the least that could be done.

25. Ms. Ksentini took the Chair.

26. Mr. TANG Boqiao (International Fellowship of Reconciliation), speaking as former Chairman of the Human Students' Autonomous Federation, testified to the fate which had befallen him as a result of his participation in the pro-democracy movement of 1989 and that of persons still detained in China. Following the massacre of 4 June 1989, he had been arrested on 13 July in the province of Guangdong, held without charge and then taken back to Hunan. He had been detained in Changsha City No. 1 jail and had been subjected to interrogation sessions lasting up to 20 hours a day over a period of four months. It was only on 20 December 1989 that he had been charged with "counter-revolutionary propaganda" and "treason and defection to the enemy". He had been put on trial in June 1990 and sentenced to three years' imprisonment for counter-revolutionary activities. In November 1990, he had been transferred to Longxi prison and, with another seven detainees, locked up in a tiny cell and beaten for allegedly organizing a counter-revolutionary rally. On his release, learning that he was again on the wanted list, he had fled from China in July 1991.

27. During his 18 months of imprisonment, he had witnessed numerous instances of ill-treatment of his co-detainees. Professor Peng Yu-Zhang, aged 70, had remained for three months attached by his four limbs to a horizontal plank. On 23 May 1989, Yu Zhi-jian and Yu Dong-jue had been respectively sentenced to 20 years' and 16 years' imprisonment for throwing paint at the portrait of Mao Ze-dong on Tiananmen Square. They had both been tortured and were reported to be extremely ill. He urgently appealed to the Sub-Commission to give attention to the fate of those two men and to that of dissidents who although they had been released from prison found themselves, as it were, prisoners for life, since they could not live in town, were relegated to the country and were forced to work as agricultural labourers.

28. He reported the emergence of a network of independent organizations which were fighting for individual rights and freedoms in China. The All-China People's Autonomous Federation had made its existence public in June 1992, in the hope that concerted international attention would deter the Chinese Government from stepping up its campaign of repression against pro-democracy

activists and defenders of human rights. He asked the Sub-Commission to recognize the Federation and support its efforts. He further asked the Sub-Commission to keep the human rights situation in China under review and requested that a special rapporteur should be appointed to report on conditions of detention in that country. In conclusion, he appealed to the Chinese Government to abide by its obligations as a Member of the United Nations.

29. Mr. SOTTAS (World Organization against Torture) recalled the great importance of the independence of the judiciary, jurors, assessors and lawyers, which he considered to be an essential although not a sufficient condition to ensure the proper administration of justice. He warned against the danger of jurors who were unable to step back from their own prejudices, and mentioned the recent trial of police officers in the United States which had resulted in an acquittal, when the jury had had irrefutable evidence of the guilt of the accused.

30. General vigilance was needed, particularly at a time when so many countries were embarking on a process of democratization which was leading - regrettably - to tolerance of populist and nationalist theories and movements which were undermining the very foundations of human rights. Although it was still a minority trend, to his way of thinking it was nevertheless a genuine threat.

31. He described the confusion of the executive, legislative and judicial powers which in many countries prevented justice from being independent. In particular, he referred to the case of Saudi Arabia where the king appointed the Minister of Justice and all judges in general, although they could be dismissed at any time by royal decree. In the majority of cases, the courts upheld the decisions taken by the Minister of the Interior or the security services. The lack of a written Penal Code reinforced the dependence of the judges vis-à-vis the executive. The Shariah was in fact the only criterion and the judges also had to take care not to displease the religious authorities. He reported arbitrary arrests, secret detentions, torture and confessions extracted by force, and observed that the judiciary was taking none of the steps it needed to take. The confusion of powers was found in many other countries, particularly in Bhutan, where the authorities had adopted a number of measures to strengthen national unity which seriously affected the rights and freedoms of citizens of Nepalese origin. He spoke of the feudal control exercised by the judiciary which prevented victims from enforcing their rights in the numerous cases of torture and rape which had been reported in the last few years.

32. The independence of the judiciary was not only threatened by systems which did not recognize a strict division of power. In some countries, forces which had links with paramilitary movements or terrorist organizations or organized crime regularly attacked representatives of the judiciary. In Colombia, between March 1979 and September 1991, 515 cases of serious violence against the representatives of the judiciary had been recorded. Violence had reached such levels that prosecutors hesitated to initiate proceedings against the perpetrators of human rights violations, whose impunity was constantly increasing.

33. Another means of impeding the course of justice was to make the security forces answerable to emergency military courts which, generally speaking, were

not impartial. In Guatemala, although the military courts claimed to be more severe than the civilian courts, investigations were rarely completed when military or police personnel were implicated. In Honduras, military justice often intruded on civil cases; for example, Colonel Erick Sanchez, facing charges of having killed a civilian, had been acquitted by a military court; in the case of the kidnapping of Richi Mabel Martínez by officers of the armed forces, a military court had taken over the case after it had already been investigated by a civilian judge. Justice also suffered when the opening of proceedings concerning members of the police forces or the military accused of torture was subject to prior authorization by the government authorities. That was so in Turkey, where the Anti-Terrorism act of 12 April 1991 seemed particularly aimed at the Kurds. Although the Turkish authorities claimed that the Act had been amended, he noted that the official Gazette had not reported such as amendment.

34. He also referred to the direct intervention of the executive in removing judges whose presence was regarded as undesirable. That had allegedly happened in Peru since the coup d'état of April 1992 when in less than a month 133 magistrates had been dismissed. Lastly, he recalled the numerous amnesties proclaimed under various circumstances; that practice was often presented as a gesture of national reconciliation but its effect was to withdraw numerous cases from the jurisdiction of the courts and thus to encourage impunity. In view of those widespread practices, he asked the Sub-Commission to propose a group of measures which would ensure the protection of the judiciary and of justice, in the hope of halting violations.

35. Mr. SACHAR said that he wished to give certain speakers some additional details which the Indian Government itself should perhaps have supplied. With regard to the question of states of emergency and the principle of the sacrosanct nature of certain rights even in such circumstances, he informed members that under the Indian Constitution the executive was not empowered to proclaim a state of emergency except in the event of a serious threat to State security, external aggression or armed rebellion. Once proclaimed, the state of emergency could not exceed one month, unless it was decided to extent it; such a decision had to be approved by both chambers, both of which were elected. A six-month extension was possible, following which a further decision must be taken by the two chambers. Some rights, particularly in relation to equality and non-discrimination, could be suspended; however, under article 20 of the Constitution, the right to life and to freedom could not be suspended. Under article 21 of the Constitution the right of habeas corpus also remained applicable under a state of emergency.

36. While deploring the frequent practice of arbitrary detentions worldwide, he considered that in India the law seemed to provide guarantees against abuses. In the event of arrest, the person concerned must be informed immediately of the charges against him. An advisory council made up of three magistrates of the Supreme Court did exist and all detainees could appear before it. If the council considered that the detention was unjustified, it demanded the immediate release of the detainee, which then became mandatory.

37. He deplored India's Anti-Terrorism Act, which seriously infringed the rights in force under normal circumstances. Under the Act, the power of detention was broadened and the duration of detention was extended. Although that involved an infringement of fundamental human rights, it should not be

forgotten that the Act had been voted in under the pressure of terrorism and that a country like the United Kingdom also had an anti-terrorism Act approved under the pressure of events in Northern Ireland.

38. As for the question of the independence of the judiciary, he stated that although magistrates were appointed by the executive, once appointed they depended exclusively on the judiciary. Pressures were being brought to bear, to counter which it had been proposed that a national commission composed of parliamentarians, the leader of the opposition and magistrates should be set up in order to appoint judges. In any event, the judges of first-instance courts could only be dismissed by the magistrates of higher courts, while the latter could only be removed from office in the context of a special procedure requiring parliamentary approval.

39. With regard to the right to a fair trial, he recalled the principle of habeas corpus, whereby a person arrested must be brought before a magistrate within the 24 hours following his arrest, failing which his detention would become illegal. In addition, a lawyer could be present at all stages of proceedings. Legal aid existed, but he admitted that it was not really satisfactory in view of the small budget assigned to it.

40. Coming back to a statement by an NGO describing an Act authorizing the police to fire on a crowd, he said that an Act had indeed been voted in under the pressure of terrorism which empowered the police to fire on a crowd after calling on its members to disperse, whereas previously a decision by a magistrate had been required before the police could fire.

41. He raised the question of compensation in the event of improper detention and informed the Sub-Commission that the Indian courts were particularly liberal in that regard. In addition, the person himself did not have to appear in court, since the court could be approached directly by an NGO. He referred in that regard to the Bhopal affair; it was NGOs which had brought the matter before the courts and obtained compensation for the victims, even before the liability of the multinational cooperation Union Carbide had been proved.

42. Lastly, in connection with crimes whose victims were women, particularly rape in police stations, he said that the law had been amended and that henceforth, if a woman claimed to have been raped in a police station, the accusation of rape would be maintained, whereas in the past all the police officer incriminated had had to do to escape prosecution was to claim that his victim had consented. That was a reversal of the presumption of innocence which was also to be found in the event of a death in a police station. There again, an NGO could initiate proceedings. He said that, regrettably, no country was completely beyond reproach in respect of those issues and called for constant vigilance.

43. Mr. SINGH (Liberation) said that, while human rights were perhaps protected by the Constitution and laws of India, as the Government liked to maintain, while denying the existence of human rights violations in the states under its jurisdiction, guarantees of human rights were generally disregarded by the police with the silent connivance of the executive and the judiciary.

44. The integrity of the judiciary was measured by its independence which was precisely what was at risk in India where judges were actually at the service

of the Government. In a recent report on the situation of human rights in India, Amnesty International even mentioned cases in which judges had issued false reports, ignored evidence and otherwise acted to conceal unpalatable truths. In particular, the legal safeguards so often cited by Indian politicians were not applied in the case of persons charged with political offences under special Acts such as the Terrorist and Disruptive Activities (Prevention) Act 1985 (TADA) or the National Security Act. Such cases were generally heard in camera in special courts whose decisions were only subject to appeal before the State Supreme Court within 30 days. The right to a fair trial was not guaranteed since the accused were presumed to be guilty until proved innocent, while confessions made before a police officer above the rank of superintendent were admissible as evidence and the identity of witnesses was not necessarily revealed. Increasingly, non-political crimes under the Penal Code were judged by the special courts and it was even the case that in Amritsar, the special courts were overloaded with cases while the ordinary courts had very few to try. According to another Amnesty International report, dated May 1992, the situation was due to the fact that the Indian police had neither the training nor adequate time or manpower to investigate the offences committed as they should, and therefore took shortcuts to achieve their ends, violating fundamental rights in the process. It was no secret that the Government and the police itself resorted to the services of undercover squads of known criminals who used unorthodox methods and undertook to capture or assassinate people accused of being terrorists in exchange for large rewards. Atrocities were thus committed with impunity and that helped in part to explain why the police frequently failed to carry out investigations into certain abuses for which the independence movements were generally blamed. He thanked the Sub-Commission for having given him the opportunity to draw its attention to the problems which existed in India regarding respect for the right to a fair trial and the principle of an independent judiciary.

45. Mr. TEITELBAUM (American Association of Jurists) drew the Sub-Commission's attention to the question of the impunity enjoyed by the perpetrators of serious violations of economic, social and cultural rights which took a number of forms and could be divided into two categories. Firstly, there were the economic offences mentioned in various national laws such as fraud, flight of currency, tax evasion, smuggling, embezzlement of public funds and the use of monopoly to the detriment of individuals or the community in general. Very often the perpetrators of those offences went unpunished, particularly when they had connections with the executive or major economic groups. Next came transnational offences which fell outside a State's criminal jurisdiction, where impunity had very serious consequences since the violation of fundamental rights was involved. Sanctions in that area also implied international penal cooperation in the framework of a special criminal jurisdiction of the type envisaged during the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders. In order to combat impunity, the General Assembly should initially classify certain practices which led to violations of economic, social and cultural rights as international offences and adopt an optional protocol to the International Covenant on Economic, Social and Cultural Rights. In the opinion of the American Association of Jurists, it was certain that the impunity of the perpetrators of violations of those rights should come under the terms of reference of experts concerned with impunity in general, as should also be the case with regard to the subornation of foreign officials, for example by companies wishing to acquire property under favourable

conditions - a special aspect of economic offences. Sanctions were applicable to the perpetrators of such offences in the United States under an Act of 1977 adopted following a corruption case which had excited a great deal of interest, but in some European countries such offences continued to go unpunished.

46. It was also important to stress that if impunity was to be combated it must be within the bounds of legality, particularly respect for the principles and fundamental rules of international law. The American Association of Jurists was concerned by the judgement rendered by the United States Supreme Court authorizing the kidnapping of persons in foreign countries and the decision handed down by the International Court of Justice (ICJ) on 14 April 1992 concerning the interpretation and application of the 1971 Montreal Convention in the affair of the Lockerbie plane disaster. The Court had considered that Libya and the United States should apply the Security Council's resolution, particularly resolution 748 (1992) of 31 March 1992 in which the Security Council had called upon Libya to extradite the two persons suspected of being the perpetrators of the attack and had decided to apply sanctions to Libya until it complied with that request, and had pointed out that in conformity with Article 103 of the Charter, the obligations of the parties in that regard prevailed over their obligations under any other international agreement, including the Montreal Convention. As Judge Bedjaoui had stated in his dissenting opinion, there were two different issues at stake: the extradition of the two Libyan nationals, a legal matter which the Court should consider at Libya's request, and State terrorism and Libya's international responsibility, a political matter which should be dealt with by the Security Council at the request of the United States and Great Britain. In the circumstances, the difficulty was that the Security Council had not only taken political measures against Libya but had also called upon it to extradite its two nationals, thereby encroaching to some extent on the functions of ICJ before the Court had even handed down its decision. It was evident that both the Court and the Security Council must act in conformity with the Charter of the United Nations. Judge Bedjaoui had stressed in his dissenting opinion that the Security Council, like any State Member of the United Nations, was subject to international law since the Organization itself was a subject of international law, and with regard to the question of extradition must comply with the provisions of article 5 of the Montreal Convention which was binding on all parties to the dispute since they had acceded to the Convention and were therefore required to respect the general principles of international law. That was equally valid for the ICJ, which had nevertheless preferred to give way to Security Council resolution 748 (1992). The Security Council could therefore be seen to have acted in a manner incompatible with the Charter by preventing ICJ from carrying out its mission or by actually placing it in a state of dependence contrary to the principle of the separation and independence of the judiciary from the executive, within the United Nations system itself. At all events, the American Association of Jurists defended the primacy of the law over force and arbitrary action and considered that the Sub-Commission should take a clear stand along those lines.

47. Mr. KHALIL said he greatly appreciated all the reports prepared under agenda item 10. Mr. Despouy's report on human rights and states of emergency (E/CN.4/Sub.2/1992/23) gave a very clear picture of the situation in a considerable number of countries. The Special Rapporteur had noted that, according to the information available to him, 80 States had been forced to

adopt emergency measures to deal with crisis situations since 1985, including countries known for their respect for democracy and the stability of their institutions. He took note of the official situation of a large number of republics which had been part of the former Soviet Union which were currently in a state of emergency and whose domestic laws had not been adapted to the international standards governing the legality of emergency situations. He found it encouraging that many States had responded to the Special Rapporteur's requests for information. He did not fully understand the reply of the Government of Israel (paras. 32 and 33 of the report) which, as the Special Rapporteur had pointed out, had provided no further information regarding the emergency legislation in force in the occupied territories which could be of some assistance. He also appreciated the Special Rapporteur's initiative in sending a letter to the African Commission on Human and Peoples' Rights and hoped that the contacts established with that Commission would have beneficial consequences for human rights in Africa. Lastly, he endorsed Mr. Despouy's suggestion of establishing a database on states of emergency.

48. The updated report of Mrs. Bautista (E/CN.4/Sub.2/1992/20) contained additional information on the efforts made to ensure the application of international standards concerning the human rights of detained juveniles. Mrs. Bautista had, however, noted that she had not had sufficient information to evaluate the effects of the United Nations Guidelines for the Prevention of Juvenile Deliquency (Riyadh Guidelines) and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, adopted by the General Assembly in resolution 45/112 and 45/113 of 14 December 1990, respectively. She noted, however, that the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), adopted by the General Assembly in its resolution 40/33 of 29 November 1985, had substantially influenced the juvenile justice systems of several countries, which had changed accordingly. The adoption of the Convention on the Rights of the Child by the General Assembly in its resolution 44/25 of 20 November 1989 had further contributed to attracting the attention of the mass media and public opinion to the needs of children. In Egypt, the activity undertaken in that regard by Mrs. Mubarak had produced excellent results. In the second part of her report, Mrs. Bautista had reviewed the positive effects of the implementation of international standards. She had particularly stressed the need to separate adults and juveniles in penal institutions both during pre-trial detention and after conviction in order to avoid any "criminal contamination" and on the need to find solutions other than deprivation of liberty. She had rightly noted that there was a close relationship between the notion of responsibility for criminal behaviour and other social rights and responsibilities (para. 69). With regard to special establishments for juvenile delinquents, she had stressed that their essential aim should be the re-education of young people so as to enable them to take their place in society. Those were the principles which governed the decisions of juvenile courts in Egypt.

49. Concerning the issue of the privatization of prisons which was the subject of a working paper by the Secretary-General (E/CN.4/Sub.2/1992/21), he noted that Egypt was one of three countries which had responded to requests for information from the Secretary-General. The three countries had not declared themselves in favour of such privatization for a number of reasons and the Friends World Committee for Consultation (Quakers) had opposed it, considering that it was for the community to concern itself with delinquents

and that privatization would allow Governments to wash their hands of the responsibility to some extent, particularly with regard to the treatment of detainees.

50. The report prepared by Mr. Joinet (E/CN.4/Sub.2/1992/25) contained some interesting information on measures and practices aimed at strengthening or, conversely, weakening the safeguards of independence and protection of the members of the judiciary in various countries. Mr. Joinet had made particular mention of the establishment in South Africa of committees of specialists with the task of working on a full revision of all South African private and public law, whose reports would serve as the basis for reforms, and had mentioned that the Minister of Justice of South Africa had undertaken to choose judges from among the members of all communities and not just whites (paras. 9 and 10). In the case of Israel, the Special Rapporteur said that according to several NGO reports, in the territories occupied by Israel the administration of military justice contravened international rules, particularly with regard to detainees' access to legal assistance and their conditions of detention (paras. 98-100). He also quoted other non-governmental sources which recorded hundreds of cases of "pressure" exercised in many countries on judges and lawyers. Thus 532 cases of lawyers who had been victims of such "pressure", which sometimes even went to the lengths of execution, had been recorded by non-governmental lawyers in 51 countries (paras. 78 and 79). It was essential that the Sub-Commission should address those very alarming practices. Lastly, he endorsed the idea proposed by Mr. Joinet in paragraph 7 of his conclusions and recommendations of organizing an information campaign to increase awareness (E/CN.4/Sub.2/1992/25/Add.1).

51. Ms. WARZAZI said she wished to register a strong protest against the behaviour of an NGO which had made spiteful remarks about Morocco and about herself. The lack of objectivity of persons who had been ill-treated in prison in any country was understandable, but it was inconceivable that the NGO in question which had attacked Morocco could forget the anguish of all the parents of Moroccan children murdered on account of the colour of their skins or their nationality, or the parents of Palestinian children whose limbs had been broken or who had been systematically tortured or summarily shot down by specialized units in the occupied territories. Why did that organization remain silent about the physical or psychological ill-treatment of detainees in the prisons of countries which were not developing countries or the abuses committed by commandos which blithely crossed frontiers in order to execute nationalists, the brutal repression of demonstrations and the conditions of slavery of migrant workers employed on large farms in so-called democratic countries? That policy of double standards caused hundreds of thousands of deaths, injuries and refugees, particularly among women and children, simply because of their race or their religion. She herself had a clear conscience since as an expert on a large number of committees she spared no effort to make her modest contribution to the advancement of human rights. As far as Morocco was concerned, no hatred or campaign of defamation could take away the merit of having promoted the adoption, inter alia, of the International Covenants on Human Rights and the International Convention on the Elimination of All Forms of Racial Discrimination and of having proposed the organization of the World Conference on Human Rights. Malicious people might perhaps pretend to ignore the fact, but it would be recorded in the annals of the United Nations.

52. Mr. RIMDAP (Observer for Nigeria), replying to the allegation made by the representative of the International Commission of Jurists at an earlier meeting to the effect that two human rights lawyers had been arrested in Nigeria because they had joined the call for civilian rule, said that it was not only unfounded but was a deliberate attempt to malign Nigeria. He recalled that, since its assumption of office in 1985, the Nigerian military Government had set out a clear programme for transition intended to usher in civilian rule in January 1993. The programme, which it had been following faithfully, had started with elections of local governments in 1990, State governors in 1991 and National Assembly members in July 1992 and would culminate in the presidential elections of December 1992. In the circumstances, why would the two lawyers concerned have requested the restoration of civilian rule, let alone being arrested for it? While appreciating the concern of the NGOs to protect the independence of judges and laywers, he reminded them that it was the unquestionable responsibility of all Governments, including the Nigerian Government, to take steps to forestall all breaches of law and order in society irrespective of who the culprits were. It was precisely because they had infringed the law that the persons in question had been arrested. In particular, they had been behind the violent public riots against the Federal Government in May 1992. They had been released since, but once again it was wrong to state that they had been arrested for calling for civilian rule in Nigeria. In conclusion, he advised ICJ and all other NGOs present always to verify their facts before making unsubstantiated allegations which in no way advanced the work of the Sub-Commission.

The meeting rose at 1 p.m.